

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALAN T. SWEET and MICHELLE SWEET,

Plaintiffs,

v.

NORTHWEST TRUSTEE SERVICES;
SHANNON BLOOD; EMC MORTGAGE
CORPORATION; FIRST AMERICAN
TITLE COMPANY; WASHINGTON
MUTUAL BANK,

Defendants.

NO. C05-1463JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiffs' Motion to Remand to Skagit County Superior Court (Dkt. # 6). Having reviewed the motion together with all documents filed in support thereof, the court DENIES Plaintiffs' motion to remand without prejudice and directs Plaintiffs to file their amended complaint with this court.

II. BACKGROUND

This action stems from a quiet title action. Plaintiffs filed their claim in Skagit County Superior Court on August 4, 2005 against Northwest Trustee Services, Shannon Blood, EMC Mortgage Corporation, First American Title Company, and Washington Mutual Bank. In

1 their original complaint, Plaintiffs alleged claims arising under state law as well as under the
2 federal Truth in Lending Act, 15 U.S.C. § 1601 et seq. and Federal Reserve Board
3 Regulations C, Z, and AA, 12 C.F.R. §§ 203, 266, and 227, respectively. (Dkt. # 1, Exh. A).
4 On August 24, 2005, Defendants¹ filed a notice of removal with this court, alleging that
5 removal is proper based on federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441.

6 Plaintiffs now seek an order remanding the case to Skagit County Superior Court.
7 Plaintiffs argue that this court lacks removal jurisdiction based on a federal question. In
8 doing so, Plaintiffs cite their intention to amend their complaint and voluntarily dismiss all
9 federal claims. (Dkt. # 6). Plaintiffs indeed filed an amended complaint on September 9,
10 2004 that drops the federal claims, but did so in Skagit County Superior Court.

11 III. ANALYSIS

12 Whether a federal district court has removal jurisdiction based on a federal question is
13 determined from the original complaint as it exists at the time of removal. Libhart v. Santa
14 Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir. 1979). Indeed, a post-removal amendment
15 of the complaint to remove federal claims does not *necessarily* defeat a federal court's subject
16 matter jurisdiction. See Sparta Surgical Corp. v. National Ass'n of Securities Dealers, Inc.,
17 159 F.3d 1209, 1213 (9th Cir. 1998). Continuing to exercise jurisdiction, however, when
18 federal claims are dropped in the early stages of the lawsuit may be an abuse of discretion.
19 Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 349 (1988) (noting that values of judicial
20 economy, convenience, fairness, and comity may dictate that a federal court decline

21
22 ¹All defendants in a state action must join in the notice of removal. Parrino v. FHP, Inc., 146
23 F.3d 699, 703 (9th Cir. 1998). When fewer than all defendants have joined the notice of removal, the
24 burden is on the removing defendants to explain the absence of the other defendants - absent such
25 explanation, removal notice is facially deficient. Prize Frize, Inc. v. Matrix (U.S.) Inc., 167 F.3d 1261,
1266 (9th Cir. 1999). Here, Defendants EMC Mortgage Corporation and Washington Mutual Bank
do not appear to have joined the Notice of Removal. The removing Defendants should submit to the
court information regarding this potential defect within (7) days of the date of this order.

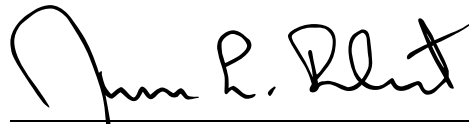
1 jurisdiction where federal-law claims have dropped out of the lawsuit in its early stages); see
2 also Wren v. Sletten Const. Co., 654 F.2d 529, 536 (9th Cir. 1981) (same).

3 Here, Defendants' notice of removal correctly cites several federal causes of action
4 contained in Plaintiffs' original complaint. (Dkt. # 1). Although Plaintiffs state their
5 intention to file an amended complaint and drop the federal claims, they have yet to do so *in*
6 *this court*. Accordingly, the court denies Plaintiffs' motion to remand without prejudice and
7 directs Plaintiffs to properly submit its amended complaint to this court within ten days of the
8 date of this order.

9 IV. CONCLUSION

10 For the foregoing reasons, the court DENIES Plaintiffs' motion to remand without
11 prejudice (Dkt. # 6).

12 Dated this 14th day of September, 2005.

13
14 

15 JAMES L. ROBART
16 United States District Judge
17
18
19
20
21
22
23
24
25